

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33572

STATE OF IDAHO,)	2008 Unpublished Opinion No. 548
)	
Plaintiff-Respondent,)	Filed: July 14, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
KENNETH JAMES TRACY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Madison County. Hon. Brent J. Moss, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Kenneth James Tracy was charged with and pled guilty to lewd conduct with a minor under sixteen, I.C. § 18-1508, and was sentenced to a unified term of twenty-five years, with five years determinate, and the district court retained jurisdiction. After Tracy completed his rider, the district court suspended his sentence and placed him on probation for ten years. Tracy subsequently violated the terms of his probation and the district court reinstated his probation. Tracy again violated the terms of his probation and the district court revoked his probation and ordered the underlying sentence into execution. Tracy filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court granted by again retaining jurisdiction. After Tracy completed his second rider, the district court again suspended the sentence and placed him on probation. Tracy again violated the terms of his probation and the district court revoked his probation and ordered the underlying sentence into execution. Tracy filed an untimely second

Rule 35 motion for reconsideration of sentence, which the district court denied. Tracy appeals, contending that the district court abused its discretion by denying his Rule 35 motion.

Idaho Criminal Rule 35 vests the trial court with jurisdiction to consider and act upon a motion to reduce a sentence filed within fourteen days after the entry of an order revoking probation. I.C.R. 35. The fourteen-day filing limit is a jurisdictional limit on the authority of the trial court to consider a timely motion for reduction of sentence. *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). Because Tracy's motion was filed more than fourteen days after entry of the order revoking probation, the district court lacked jurisdiction to consider it. Accordingly, the order of the district court denying Tracy's Rule 35 motion is affirmed.